REMARKS

In the Office Action mailed December 31, 2008 the Office noted that claims 11 and 14-20 were pending and rejected claims 11 and 14-17, 19 and 20. Claims 11 and 17 have been amended, claim 16 has been canceled, and, thus, in view of the foregoing claims 11, 14, 15, 17, 19 and 20 remain pending for reconsideration which is requested. No new matter has been added. The Office's rejections are traversed below.

REJECTIONS under 35 U.S.C. § 103

Claims 11, 13-17, 19 and 20 stand rejected under 35 U.S.C. § 103(a) as being obvious over Salzman, U.S. Patent No. 5,423,320 in view of Fiddian-Greene, U.S. Patent No. 6,238,339 in further view of Singh, U.S. Patent No. 5,490,999. The Applicants respectfully disagree and traverse the rejection with an argument and amendment.

On page 4 of the Office Action, the Office asserts that it was obvious as a matter of design choice to claim "***wherein the outer diameter of the first tube (1) ranges from 2 to 4 mm and its wall thickness from 0.5 to 1.0 mm, and the outer diameter of the second tube (2) ranges from 1.0 to 1.5 mm and its wall thickness from 0.3 to 0.5 mm,***" as in claim 16.

However, the outer diameter and thickness are only useful in a device of the present claims as:

a) Tubes (1) and (2) are fixed to each other. In claim

1: … it comprises a second tube (2) arranged substantially parallel with and fixed the first tube (1)."

b) The section to be introduced into the gastrointestinal tract of the body of the patient comprises the whole length of the first tube (1) and the second tube (2). In Fig, 1 the section to be introduced into the gastrointestinal tract of the patient (24) comprises the whole length of tube (1) and tube (2).

c) Both "the first tube (1) and the second tube (2) are made of a material readily permeable for gases".

d) The first tube (1) and the second tube (2) take part in the gas exchange during the test with their whole length, whereby the test can be carried out within a short time.

The claimed combination of the wall thickness and diameter would not be chosen by one of ordinary skill in the art since it would not operate with the known apparatuses. The claimed small wall thicknesses and diameters are rendered possible only by the special features and arrangement of the tonometric device according to the invention.

Thus, the Applicant has amended claim 11 to further recite "a second tube (2) arranged substantially parallel with and fixed to the first tube (1), wherein the distal end (22) of the second tube (2) is in communicating connection with the first tube (1), ***wherein the distal end (22) of the second tube (2) is in communicating connection with the first tube (1),*** and the

first tube (1) and the second tube (2) are made of a material readily permeable for gases and substantially impermeable for body fluids and other substances, and an additional tubing (5) is connected to the second tube (2), ***wherein the outer diameter of the first tube (1) ranges from 2 to 4 mm and its wall thickness from 0.5 to 1.0 mm, and the outer diameter of the second tube (2) ranges from 1.0 to 1.5 mm and its wall thickness from 0.3 to 0.5 mm.***" (Emphasis added) Support for the amendment may be found, for example in Fig. 1 and claim 16 as previously presented. The Applicant submits that no new matter is believed to have been added by the amendment of the claim.

Further, claim 11 is different from the apparatus of Salzman, based on the feature in claim 11 that the first tube (1) and the second tube (2) are connected to additional tubings. In contrast, Salzman does not disclose a solution wherein the first tube (1) and the second tube (2) to be introduced into the gastrointestinal lumen of the patient would be made of a single material which is permeable for gases but impermeable for body fluids, that is the first tube (1) and the second tube (2) are gas permeable in their full length. Salzman uses for this purpose several membranes, which is a more complicated solution. In Salzman col. 5, lines 19 to 23 an embodiment is described "wherein only one membrane would be blocked, while at least one other membrane would permit gas permeation."

In Salzman, the sensors are not stable in the given

measuring medium whereby repeated calibration is necessary. Further, the sterilization of the sensors and their use in the body cavities for measuring is problematic. The probes of Salzman can be used only once and therefore they are unnecessarily expensive. The membrane at the end of the probe which is permeable for gases only allows a very small amount of air for recirculation. The "movement of this small amount of air by a pump for a long distance and its external measurement is associated with many sources of error if it is possible at all.

A further problem with the apparatus of Saltman provided with a sensor solely at the end of a single probe is that it is able to determine the gas tension only at a very small local surface which, even on the basis of literature data, in knowledge of the varying structure of the stomach wall can distort the measuring results.

For at least the reasons discussed above, Salztman, Fiddian-Greene and Singh, taken separately or in combination, fail to render obvious the features of claim 11 and the claims dependent therefrom.

Withdrawal of the rejections is respectfully requested.

SUMMARY

It is submitted that the claims satisfy the requirements of 35 U.S.C. § 103. It is also submitted that claims 11, 14, 15, 17, 19 and 20 continue to be allowable. It is

further submitted that the claims are not taught, disclosed or suggested by the prior art. The claims are therefore in a condition suitable for allowance. An early Notice of Allowance is requested.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

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